

United States Court of Appeals
For the Eighth Circuit

No. 12-1649

Michael Keating, Jr.

Appellant

v.

Gene Smith, M.D.; Larry Doyle, Jail Administrator, Lincoln County Jail; Dan Torres, Sheriff, Lincoln County Sheriff's Department; Ronald Henderson, U.S. Marshal; Diana Cockrell, Nurse; U.S. Marshals Service, in their individual and official capacity; United States Bureau of Prisons; John Does, 1-10; Jane Does, 1-10

Appellees

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: November 7, 2012
Filed: November 16, 2012
[Unpublished]

Before MURPHY, ARNOLD, and SMITH, Circuit Judges.

PER CURIAM.

Inmate Michael Keating appeals the district court's¹ grant of a motion to dismiss, and the court's later adverse grant of summary judgment, in his action raising claims that he suffered deliberate indifference to his serious medical needs, and suffered medical malpractice under Missouri law, when Nurse Diana Cockrell and Dr. Gene Smith treated him for a broken finger while he was detained in a county jail.² We deny Dr. Smith's motion to dismiss the appeal against him for lack of an appealable order, and we affirm the judgment of the district court.

Specifically, we agree with the court that the medical malpractice claims failed because Mr. Keating did not comply with a Missouri statute requiring his timely submission of an affidavit based on the opinion of a legally qualified health-care provider certifying the merits of his case. See Mo. Rev. Stat. § 538.225. We reject as meritless Mr. Keating's arguments that the statute did not apply merely because he filed suit in federal court, see Mackovich v. United States, 630 F.3d 1134, 1135 (8th Cir. 2011) (per curiam), and that Ms. Cockrell waived the requirement. We also agree with the district court that the state-law claim for intentional infliction of emotional distress fails as a matter of law. Finally, nothing in the record showed that Ms. Cockrell exhibited deliberate indifference towards Mr. Keating: to the contrary, she provided treatment personally, referred Mr. Keating to Dr. Smith repeatedly, and consistently responded to Mr. Keating's complaints. See Holden v. Hirner, 663 F.3d 336, 340 (8th Cir. 2011). As the district court noted, it is unclear whether Mr. Keating intended to raise a deliberate-indifference claim against Dr. Smith as well; like the district court, we conclude that any such claim fails as a matter of law. Accordingly, we affirm. See 8th Cir. R. 47B.

¹The Honorable David S. Doty, United States District Judge for the District of Minnesota, sitting by designation in the Eastern District of Missouri.

²Mr. Keating does not appeal the dismissal of the other named defendants.